

THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

TONYA WALLACE,

Plaintiff,

v.

BOSTON SCIENTIFIC CORPORATION,
d/b/a MANSFIELD SCIENTIFIC, INC.
(MICROVASIVE, INC.),

Defendant.

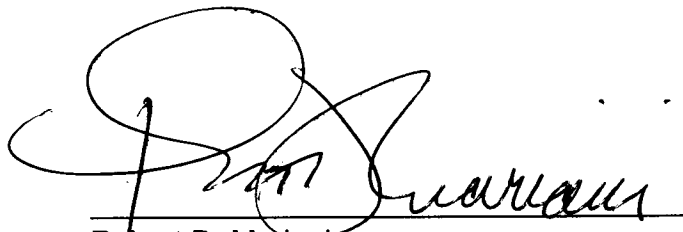
3:18-CV-1839
(JUDGE MARIANI)

ORDER

AND NOW, THIS 8th DAY OF JANUARY, 2019, upon review of Magistrate Judge Carlson's Report and Recommendation ("R&R") (Doc. 10) for clear error or manifest injustice, **IT IS HEREBY ORDERED THAT:**

1. The R&R (Doc. 10) is **ADOPTED** for the reasons set forth therein.
2. Plaintiff's common law fraud claim (Count IV); fraudulent concealment claim (Count V); constructive fraud claim (Count VI); negligent misrepresentation claim (Count VII); breach of express warranty claim (Count IX); breach of implied warranty claim (Count X); and unjust enrichment claim (Count XV) are **DISMISSED** pursuant to Plaintiff's representation that she "will not be proceeding with [those] claims at trial" (Doc. 7-2, at 3).
3. Defendant's Motion to Dismiss for Failure to State a Claim (Doc. 6) is **GRANTED IN PART AND DENIED IN PART AS FOLLOWS:**

- a. Defendant's Motion to Dismiss is **GRANTED** as to Plaintiff's design defect and failure-to-warn strict liability claims. Those claims are **DISMISSED WITH PREJUDICE**.
- b. Defendant's Motion to Dismiss is **DENIED** in all other respects.
4. This action is **REMANDED** to Magistrate Judge Carlson for further pretrial proceedings in accordance with this Court's November 6, 2018 Order (Doc. 8).



Robert D. Mariani
United States District Judge